IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6676 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA JAMNADAS VAKHARIA

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 09/02/2001

ORAL JUDGEMENT

1. The petitioner challenge the order made by the Entertainment Commissioner on 29th October 1986 rejecting the revision application of the petitioner u/s 13 of the Gujarat Entertainment Tax Ordinance, 1970, and confirming the order of the Collector, Junagadh dated 16th June 1986 by which the petitioner's appeal against the orders of

the Mamlatdar, Visavadar dated 17-9-1984 and 29-10-1984 was dismissed.

2. The Mamlatdar, Visavadar, by his order at Annexure `A' to the petition dated 17-9-1984, relying upon the alleged admission made by the petitioner about the number of video shows and the seats, made an order u/s 9(1) of the Gujarat Entertainment Tax Act, 1977, assessing the entertainment tax at Rs.4,340=00 for the period from 1-7-1984 to 31-8-1984 and penalty of Rs.10,850=00 u/s 9(3) of the Act and Rs.780=00 as entertainment tax for the period from 2-9-1984 to 15-9-1984, with penalty of Rs.1,170=00 under the same provision. The Mamlatdar ordered the recovery of Rs.12,800=00 from the petitioner. By the order at Annexure `B' which related to the period from 16-9-1984 to 30-9-1984, the petitioner was called upon to pay up the total amount of Rs.2,625=00 towards the tax amount of Rs.1,050=00 and penalty of Rs.1,575=00 for that period. The Appeals Nos. 10 and 11 of 1984 were filed by the petitioner before the Collector, Junagadh against the assessment and penalty orders, directing the recovery of Rs.12,800=00 and Rs.2,625=00. It was contended before the appellate authority that the assessment was not warranted and the penalty could not have been imposed. The appellate authority, referring to the statement dated 3-9-1984 of the petitioner admitting that there were two shows held everyday and the capacity was of 50 seats, confirmed the order of the Mamlatdar. Before the revisional authority, it was contended that no hearing was given to the petitioner, and that inference regarding the number of seats was not warranted. The revisional authority held that, on 2-7-1984, when the Mamlatdar had made an inquiry and recorded the statement of the petitioner's partner, there were 50 chairs and 50 viewers, and therefore, the assessment was properly made on that basis.

3. The learned counsel appearing for the petitioner, relying upon the decision of the Division Bench of this Court in Gujarat Video Association v. State of Gujarat, reported in 1985 GLH 790, contended that section 6-A of the Gujarat Entertainments Tax [Amendment] Act, 1984 and Rule 13[2] of the Gujarat Cinemas [Regulations of Exhibition by Video] Rules, 1984 were held to be ultra vires the Constitution. In para 6 of the judgement, the Court observed that the Act purported to levy tax on notional entertainment and therefore, the exercise of that taxing power has to be held ultra vires the Constitution i.e. Entry 62 of the List II of Schedule VII of the Constitution. As the objectionable part was

not severable from the other part, the whole of section 6-A was struck down as ultra vires. It was also argued that the assessing authority had not given any opportunity of hearing to the petitioner.

4. The contention that since section 6-A of the Act has been struck down, the tax could not have been assessed u/s 9 is misconceived, because, the decision of this Court striking down section 6-A has been reversed by the Supreme court in State of Gujarat and others v. Hotel Ratrani, reported in 1997(2) SCC 490 in which the Supreme court in paragraphs 7 and 8 of the judgement, while considering the provision of section 6-A held that it was constitutionally valid.

5. However, it appears from the revisional order challenged by the petitioner that the revisional authority considered the question whether the petitioner was given an adequate opportunity of being heard only in the context of the appellate authority's decision, and not in the context of the assessing authority's decision. Merely on the basis of the admission of the petitioner that two shows were held and there were 50 seats in each show, the requirement of giving an opportunity to the petitioner of being heard could not have been dispensed with, especially when penalty was also imposed. The petitioner had no opportunity of putting up his case because admittedly no show cause notice was issued after the local inspection was made in which the irregularity was noticed by the Mamlatdar. The revisional authority ought to have considered the question as to whether the petitioner was given an adequate opportunity of hearing by the assessing authority.

6. The order of the revisional authority dated 29th October 1986 at Annexure `D' to the petition is therefore set aside and the revisional authority is directed to consider the revision application afresh and take a decision expeditiously in accordance with law. Rule is made absolute accordingly with no orders as to costs.

[R.K.ABICHANDANI, J.]

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